

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 Vince Panesko, Eugene Butler and  
4 Futurewise,

5 Petitioner,

6 v.  
7

8 Lewis County,

9 Respondent.  
10

11 And

12 The City of Napavine, Virgil Fox, City of  
13 Toledo and Cowlitz Indian Tribal Housing ,  
14

15 Intervenors.  
16

Case No. 08-2-0007c

**FINAL DECISION AND ORDER**

17  
18 **I. SYNOPSIS OF DECISION**

19 In this Order the Board finds that Lewis County's failure to include the population allocation  
20 amendment for the Birchfield Fully Contained Community(FCC) within the land use element  
21 of the plan was a violation of RCW 36.70A.070(1).  
22

23 The Board finds information contained in Table 4.1 of the Land Use Element did not  
24 accurately reflect modifications to urban and rural lands acreage facilitated by the  
25 challenged actions, and therefore does not comply with RCW 36.70A.070. The County  
26 must amend Table 4.1 to reflect an accurate summary of lands within cities, unincorporated  
27 urban growth areas (UGAs) and rural areas.  
28

29 The County's mapping of the Mossyrock UGA expansion represents a map correction to  
30 reflect the UGA expansion approved in 2004. Petitioner's challenge is untimely.  
31

32 The Board finds that the Napavine UGA inappropriately applied a market factor to existing  
units of housing rather than those needed to accommodate projected growth thereby

1 overstating the amount of land needed to accommodate year 2025 needs. The Board finds  
2 this to be clearly erroneous and a violation of RCW 36.70A.110(2).

3  
4 The Board further finds the County failed to “show its work” to support the analysis required  
5 by RCW 36.70A.110 when establishing a reasonable market factor to support the expansion  
6 of the Napavine UGA’s boundaries.

7  
8 With regard to the Toledo UGA, the change in designation of rural lands to include them in  
9 the expanded UGA was not accompanied by a showing that the new designation and  
10 mapping of those lands no longer substantially interferes with Goal 8 of the Growth  
11 Management Act (GMA). Inclusion of those lands into the expanded Toledo UGA without  
12 such a showing fails to comply with the GMA requirements to designate and conserve  
13 agricultural lands of long-term commercial significance.

14  
15 Finally, the Board finds that the record does not demonstrate that the County designated the  
16 Curtis Rail Yard as Type 3 Limited Area of More Intense Development (LAMIRD). Until  
17 invalidity has been removed from the affected land in the Curtis Rail Yard, it is premature to  
18 consider it for inclusion within a LAMIRD.  
19

## 20 21 **II. PROCEDURAL HISTORY**

22 On January 22, 2008, Vince Panesko filed a Petition for Review (PFR). This PFR was  
23 assigned WWGMHB Case No. 08-2-0005. The PFR challenges the adoption of Ordinance  
24 No. 1198, which amended the UGAs for several cities within Lewis County and changed  
25 LAMIRD designations within the rural area. The PFR also challenges the County’s  
26 adoption of Resolution 07-359 which effectively authorizes the adoption of Ordinance No.  
27 1198.  
28

29  
30 On February 19, 2008, Petitioners Eugene Butler and Futurewise filed a PFR. This PFR  
31 was assigned Case No. 08-2-0007. This PFR also challenged the adoption of Ordinance  
32 No. 1198 and Resolution 07-359.

1 On February 22, 2008 the Board consolidated these PFRs as Case No. 08-2-0007c.

2  
3 The Board granted intervention to the Cities of Napavine and Toledo, Virgil Fox, McFarland  
4 Cascade, the Port of Chehalis and Cowlitz Indian Tribal Housing.<sup>1</sup>

5  
6 On April 2, 2008 Petitioner Panesko submitted additions to the Index, to which the County  
7 objected on April 8, 2008. Panesko filed a response to the County's objection but did not  
8 subsequently move to supplement the record with the exhibits. The Prehearing Order in this  
9 case provided: "If the County objects to any additions proposed by Petitioners, the  
10 Petitioners may seek to add the documents to the Index (the list of documents from which  
11 exhibits may be drawn without objection) through a motion to supplement the record."<sup>2</sup>  
12 Because Panesko did not respond to the County's objection with a motion to supplement,  
13 these exhibits were not admitted.  
14

15  
16 On April 3, 2008 Petitioner Butler and Futurewise submitted Additions to the Index to which.  
17 there was no objection. These submittals were admitted to the Record for this proceeding.  
18

19 On April 16, 2008 Intervenor Cowlitz Indian Tribal Housing moved to supplement the record  
20 and an order granting that motion was issued of April 30, 2008.  
21

22 The Hearing on the Merits (HOM) in this case was held on July 8, 2008 in Chehalis,  
23 Washington. Petitioner Vince Panesko appeared *pro se*. Petitioners Eugene Butler and  
24 Futurewise appeared through Futurewise's attorney Brock Howell. Lewis County appeared  
25 through its attorney Glenn Carter. All intervenors appeared through their respective  
26 attorneys: Andrew Lane for the City of Napavine; Philip Kasin for Virgil Fox; Edmund  
27 Goodman for Cowlitz Indian Tribal Housing; and Allison Moss for McFarland Cascade and  
28 the Port of Chehalis.  
29

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31  
32 <sup>1</sup> Order Granting Intervention to City of Napavine, 2/15/08; Order Granting Intervention to Virgil Fox, 2/19/08;  
Order Granting Intervention to City of Toledo (Amended), 3/18/08; Order Granting Intervention to Cowlitz  
Indian Tribal Housing (Amended), 3/18/08; Order Granting Intervention to McFarland Cascade and Port of  
Chehalis, 3/25/08.2

<sup>2</sup> Prehearing Order at 5-6.  
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1 At the HOM, the Board requested the City of Napavine and Petitioner Futurewise to submit  
2 documentation in regards to commercial/industrial lands needs, permitted densities, critical  
3 areas, and transferable development rights. The Board received the requested documents  
4 from the City on June 18, 2008 and from Futurewise on June 21, 2008. In addition to  
5 submitting the documents requested of them, Futurewise responded to the City's submittal  
6 and moved to strike the City's submittals, asserting the City failed to provide the Petitioners  
7 with an opportunity to review the documents so as to properly contest the facts and/or  
8 material.  
9

10  
11 In response to the Board's request for documents confirming that the wellhead and reservoir  
12 parcels were included in the City of Mossyrock's UGA and excluded from the County's  
13 designation of agricultural resource land in 2007, the County submitted a copy of Resolution  
14 04-413 and the County's November 8, 2007 Report on Compliance.<sup>3</sup> Panekso filed a reply  
15 to this submission.<sup>4</sup>  
16

### 17 **III. BURDEN OF PROOF**

18 For purposes of board review of the comprehensive plans and development regulations  
19 adopted by local government, the GMA establishes three major precepts: a presumption of  
20 validity; a "clearly erroneous" standard of review; and a requirement of deference to the  
21 decisions of local government.  
22

23  
24 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and  
25 amendments to them are presumed valid upon adoption:

26 Except as provided in subsection (5) of this section, comprehensive plans and  
27 development regulations, and amendments thereto, adopted under this chapter are  
28 presumed valid upon adoption.  
29 RCW 36.70A.320(1).

30 The statute further provides that the standard of review shall be whether the challenged  
31  
32

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<sup>3</sup> Lewis County's Post-Hearing Submission of Requested Documents, July 22, 2008.

<sup>4</sup> Petitioner Panekso's Reply to Lewis County Post Hearing Submission, August 4, 2008.

1 enactments are clearly erroneous:

2 The board shall find compliance unless it determines that the action by the state  
3 agency, county, or city is clearly erroneous in view of the entire record before the  
4 board and in light of the goals and requirements of this chapter.  
5 RCW 36.70A.320(3)

6 In order to find the County's action clearly erroneous, the Board must be "left with the firm  
7 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,  
8 121 Wn.2d 179, 201, 849 P.2d 646 (1993).  
9

10 Within the framework of state goals and requirements, the boards must grant  
11 deference to local government in how they plan for growth: In recognition of the  
12 broad range of discretion that may be exercised by counties and cities in how they  
13 plan for growth, consistent with the requirements and goals of this chapter, the  
14 legislature intends for the boards to grant deference to the counties and cities in how  
15 they plan for growth, consistent with the requirements and goals of this chapter. Local  
16 comprehensive plans and development regulations require counties and cities to  
17 balance priorities and options for action in full consideration of local circumstances.  
18 The legislature finds that while this chapter requires local planning to take place  
19 within a framework of state goals and requirements, the ultimate burden and  
20 responsibility for planning, harmonizing the planning goals of this chapter, and  
21 implementing a county's or city's future rests with that community.  
22 RCW 36.70A.3201 (in part).

23 In sum, the burden is on the Petitioners to overcome the presumption of validity and  
24 demonstrate that any action taken by the County is clearly erroneous in light of the goals  
25 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).  
26 Where not clearly erroneous and thus within the framework of state goals and requirements,  
27 the planning choices of local government must be granted deference.

#### 28 IV. DISCUSSION

29 With this matter, Petitioners challenge two legislative enactments of Lewis County.  
30 Resolution No. 07-359 and Ordinance No. 1198, both adopted on December 10, 2007,  
31 which amended the County's Comprehensive Plan (CP or Plan) and amended certain  
32 zoning maps and text contained in Lewis County Code (LCC) Chapter 17.200. Both the  
Resolution and the Ordinance pertain to urban growth area (UGA) amendments for the

1 cities of Napavine, Toledo, Mossyrock, amendments to the LAMIRD designation at the  
2 Curtis Rail Yard and at Leonard Road and U.S. Highway 12, and amendments to the  
3 population projections and allocations for various jurisdictions within the County. With their  
4 PFRs, Petitioners Butler, Futurewise, and Panesko challenge the amended UGAs of the  
5 three listed cities and the Curtis Rail Yard LAMIRD as well as population allocations and  
6 land capacity assumptions.  
7

8 **Preliminary Matters:**  
9

10 *Motion to Strike sought by Futurewise as to Post-Hearing Submittals*  
11

12 At the Hearing on the Merits, the Board requested that the City of Napavine provide three  
13 items post hearing:

- 14 1. Citation to the record of the City's rationale for its commercial/industrial needs.
- 15 2. Documentation of the densities permitted in the City's zoning code.
- 16 3. Documentation of the 787 acres of critical areas identified in the City's needs  
17 analysis.

18 Napavine provided its post-hearing submission on July 18, 2008. On July 21, 2008  
19 Futurewise responded to Napavine's post-hearing submittals and moved to strike them.  
20 Futurewise argued that the GIS data provided by Napavine regarding acres of critical areas  
21 in the city is inconclusive.<sup>5</sup> Futurewise also objected to Napavine's submission based on a  
22 failure to provide Petitioners with an opportunity to contest the facts and material submitted.<sup>6</sup>  
23

24 As Napavine correctly notes in its Response to Futurewise's Motion to Strike, the Board has  
25 the inherent authority to request post-hearing submittals<sup>7</sup> and it is not uncommon for the  
26 Board to do so. The Board then determines what weight to afford such submittals in its  
27 deliberations. Furthermore, while Futurewise bases its objection, in large part, on the lack  
28 of opportunity to respond to Napavine's submittals, it has in fact responded to the substance  
29 of the GIS data in its Motion to Strike. Futurewise's motion is denied.  
30

31 \_\_\_\_\_  
32 <sup>5</sup> Futurewise's Post-Hearing Submission and Motion to Strike, at 3.

<sup>6</sup> Id. at 4.

<sup>7</sup> See, WAC 242-02-810.

1 *Use of Exhibits Outside of the Record.*

2 Napavine points out that Panesko has included Attachment 10 as an exhibit when this is not  
3 part of the record and moves the Board to strike the exhibit and arguments based upon it.<sup>8</sup>

4 The Board concurs that Attachment 10 has not been made part of the record and no notice  
5 will be taken of it or arguments based upon it.  
6

7 The County and the Cowlitz Indian Tribal Housing Authority correctly point out that they had  
8 objected to Panesko's attempt to add Attachments 10 through 16 to the record and Panesko  
9 never made a timely motion to supplement the record to include those exhibits.<sup>9</sup> Based on  
10 the County's objection and lack of a timely motion to supplement the record by Panesko, the  
11 Board takes no notice of those attachments.  
12

13  
14 McFarland Cascade and the Port of Chehalis (MCPC) correctly point out the County had  
15 objected to Panesko's attempt to add Attachments 21-24 to the record and Panesko never  
16 made a timely motion to supplement the record to include those exhibits. For the reasons  
17 cited *supra*, the Board takes no notice of those attachments.  
18

19 **Issue No. 1:** *Whether the reallocation of the Lewis County urban population to bring the*  
20 *Fully Contained Community (Birchfield FCC) total population to 6300 at build out is*  
21 *noncompliant with RCW 36.70A.070 (1) for failing to document the reallocated population*  
22 *numbers in the comp plan?*  
23

24 **Position of the Parties**

25 Panesko asserts that the estimates of future population growth for the Birchfield Fully-  
26 Contained Community (FCC) are not contained in the comprehensive plan, as required by  
27 RCW 36.70A.070 (1).<sup>10</sup> He notes that on July 12, 2007, the County Planned Growth  
28 Committee voted to increase the 20 year population projection for the Birchfield FCC from  
29 3,000 to 6,300 but the 2007 amendments to the plan did not update the appropriate section  
30

31  
32 <sup>8</sup> Napavine Prehearing Brief at 19.

<sup>9</sup> Lewis County Prehearing Brief at 17. CITH Prehearing Brief at 1.

<sup>10</sup> Panesko Prehearing Brief at 2.

1 of the Land Use Element. Panesko argues that by keeping the population projections out of  
2 the plan, the County remains free to change the population allocations without notice or  
3 public involvement and outside the annual update cycle.<sup>11</sup>

4  
5 In response, the County states it amended the County Population Allocation Table to reflect  
6 an increase in the projected population of the Birchfield FCC from 3,000 to 6,300  
7 residents.<sup>12</sup> It asserts that only the Governor and cities may challenge such an allocation  
8 and notes the GMA does not require it to create, maintain or incorporate a population  
9 allocation table into its comprehensive plan. The County argues that merely because the  
10 numbers are maintained on a table that is not incorporated into the Comprehensive Plan  
11 does not render the plan non-compliant.<sup>13</sup>

12  
13  
14 Intervenor Virgil Fox (Fox) notes the Lewis County Comprehensive Plan does not explicitly  
15 document the allocation of the Lewis County urban population to bring the Birchfield FCC  
16 total population at build-out to 6,300. Fox requests that the Board treat this failure as a *de*  
17 *minimus* mistake and order Lewis County to amend the plan accordingly.<sup>14</sup>

18  
19 In reply, Panesko states that while the GMA does not use the term “population allocation  
20 table” it requires estimates of future population growth, as well as population densities and  
21 building intensities.<sup>15</sup> He notes that, while the Birchfield future population growth number  
22 was amended, the number was not reflected in the plan as required by RCW 36.70A.070(1).  
23

## 24 **Board Discussion**

25 RCW 36.70A.070(1) requires, among other things, that: “The land use element shall include  
26 population densities, building intensities, and *estimates of future population growth.*”  
27 (Emphasis added).  
28

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30  
31 <sup>11</sup> Id. at 3.

32 <sup>12</sup> Lewis County Prehearing Brief at 6-7.

<sup>13</sup> Id.

<sup>14</sup> Fox’s Prehearing Brief at 3.

<sup>15</sup> Panesko Reply to Lewis County at 1.



1 On November 26, 2007, the Lewis County BOCC passed Resolution 07-326 which adopted  
2 amended population allocations – the future population growth - for Lewis County and  
3 increased the Birchfield FCC population allocation from 3,000 to 6,300.<sup>16</sup> Both ordinance  
4 1198 and Resolution 07-359 make reference to the population allocation amendment and  
5 attach the Lewis County Planning Commission's recommendation to the BOCC that the  
6 Birchfield FCC population allocation be amended from 3,000 to 6,300. However, neither  
7 Ordinance 1198 nor Resolution 07-359 actually amends the Lewis County Comprehensive  
8 Plan to reflect the revised population allocations for the Birchfield FCC and Lewis County.  
9 Because these numbers reflect the estimates for future population growth the failure to  
10 include the population allocation amendment within the land use element of the plan is a  
11 violation of RCW 36.70A.070(1). This is an error which the County can easily remedy.  
12

13  
14 **Conclusion:** Lewis County's failure to include the population allocation amendment for the  
15 Birchfield FCC within the land use element of the plan was a violation of RCW  
16 36.70A.070(1).  
17

18 **Issue No. 2:** *Whether Table 4.1 (Lewis County Land Use in Acres) on page 4-3 of the*  
19 *Land Use element is non-compliant with RCW 36.70A.070 preamble and RCW 36.70A.120*  
20 *for (1) failing to be internally consistent, (2) for showing 4,644 new acres of UGA while the*  
21 *amendments provide for Mossyrock = 76 new acres, Napavine = 574 new acres, and*  
22 *Toledo=39 new acres for a total of 689 new acres, and (3) for showing an increase of 4,644*  
23 *acres of UGA without showing a decrease of 4,644 acres of rural lands?*  
24

## 25 **Position of the Parties**

26 Panekso argues the Comprehensive Plan (CP) amendments to Table 4.1 do not match the  
27 text of the CP amendments. For example, he points out that while Table 4.1 shows 5,537  
28 new acres in urban areas, the plan text describes 689 new acres (Mossyrock +76; Napavine  
29 +574; Toledo + 38.5).<sup>17</sup> Panesko also notes Table 4.1 shows a 5,537 acre increase in  
30 urban areas with no decrease in other areas. Panekso further argues these errors cause  
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<sup>16</sup> IR 121.

<sup>17</sup> Panesko Prehearing Brief at 4-5.

1 the CP to not be an internally consistent document as required by RCW 36.70A.070, and,  
2 as a practical matter, the CP is misleading and cannot be used to perform daily activities  
3 within the County.

4  
5 In reply, the County notes that the GMA does not require it to maintain tables such as Table  
6 4.1, which is a summary of lands within cities, unincorporated UGAs, and rural areas.<sup>18</sup> The  
7 County points out it may be impossible to ensure that such a table is always updated and  
8 accurate in all of its particulars given the changes which periodically occur. It notes that, to  
9 the extent the table is inaccurate, the County will amend the numbers at a later date.<sup>19</sup> The  
10 County also argues Panekso did not raise issues regarding distinctions between  
11 incorporated city areas and unincorporated UGAs in his PFR and should not be allowed to  
12 raise those issues at this time.

#### 13 14 15 **Board Discussion**

16 Although Table 4.1 was not required to be included in the County's comprehensive plan,  
17 once included, its information should be accurate at the time of adoption. The County  
18 pledges to correct the information in this table to reflect an increase in urban lands  
19 corresponding to the reduction in rural lands, and it should do so as part of its compliance  
20 actions in this case.

21  
22 **Conclusion:** While information such as contained in Table 4.1 may be difficult to keep  
23 current between updates, such information must be accurate at the time of adoption. The  
24 information contained in Table 4.1 did not accurately reflect modifications to urban and rural  
25 lands acreage facilitated by the challenged actions, and therefore does not comply with  
26 RCW 36.70A.070. The County must amend Table 4.1 to reflect an accurate summary of  
27 lands within cities, unincorporated UGAs and rural areas.  
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<sup>18</sup> Lewis County Prehearing Brief at 10.

<sup>19</sup> Id. at 11.

1 **Issue No. 3:** *Whether the City of Mossyrock description in the comp plan and DR maps*  
2 *are noncompliant with RCW 36.70A.110(2), RCW 36.70A.170, RCW 36.70A.070 preamble*  
3 *and RCW 36.70A.120 for (1) failure to use current OFM numbers, (2) for claiming the*  
4 *estimated population for 2016 is 900 people when the 2000 census = 486 people and when*  
5 *OFM projections for 2007 were for 485 people (zero growth in 7 years) and for 2025*  
6 *(medium growth) were for 589, (3) for overstating the need for additional land not related to*  
7 *OFM numbers, (4) for failing to designate ARL.*

### 8 **Position of the Parties**

9 Panesko challenges the inclusion of a 36.6 acre farm into the Mossyrock UGA.<sup>20</sup> He  
10 argues, based on OFM population projections, this land is not needed for growth in the  
11 UGA. Panesko asserts that while the County has included this area within the UGA under  
12 the guise of protecting a well on the site from agricultural activities, there are no such  
13 activities within 300 feet of the well.<sup>21</sup> Panesko further argues that the County has  
14 designated this land as Agricultural Resource Land (ARL). Additionally, Panesko argues  
15 that the Board has never lifted invalidity for this land.<sup>22</sup>

16  
17  
18 The County argues this issue was settled when there was no appeal of the Board of County  
19 Commissioners' approval of the expansion of the Mossyrock UGA in 2004. The County  
20 points out that, by oversight, the map was not amended to show the 2004 expansion, so this  
21 mapping error was corrected in 2007.<sup>23</sup> The County argues Panesko should not be allowed  
22 to re-litigate the 2004 expansion decision and for the Board to allow this challenge would  
23 waste resources, requiring the County to re-litigate and the Planned Growth Committee,  
24 Planning Commission, and County Commissioners to re-hear the merits of the expansion  
25 proposal.  
26  
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### 28 **Board Discussion**

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<sup>20</sup> Panesko Prehearing Brief at 7.

<sup>21</sup> Id. at 8.

<sup>22</sup> Id at 9.

<sup>23</sup> Lewis County Prehearing Brief at 12-13.

1 The Board agrees the County's most recent action with regard to the Mossyrock UGA was  
2 in the nature of correcting a mapping error. In fact, the expansion of the Mossyrock UGA  
3 was approved by the County in 2004 in order to better protect uses near a water system's  
4 wellhead. The County Planning Commission recommended approval of this expansion, and  
5 on December 20, 2004, the Board of County Commissioners approved the City of  
6 Mossyrock's UGA expansion proposal in Resolution 04-413.<sup>24</sup> No appeal of that decision  
7 was filed. Later, the County determined that, although this UGA expansion had been  
8 approved, it had inadvertently not been mapped. The County corrected this error through  
9 the adoption of Ordinance 1198, which was an annual update of its Comprehensive Plan,  
10 pursuant to RCW 36.70A.130(2).<sup>25</sup> Such amendments do not open non-amended portions  
11 of the Plan to challenge. As this Board noted in 1000 Friends and Pro Whatcom v.  
12 Whatcom County (Pro Whatcom)<sup>26</sup> :

13  
14 We look to RCW 36.70.130 to determine what is required for an update. This  
15 provision of the GMA (RCW 36.70.130) contains two major kinds of revision  
16 requirements for comprehensive plans and development regulations. First,  
17 comprehensive plans and development regulations adopted pursuant to Ch.  
18 36.70A RCW are subject to "continuing review and evaluation".

19 While there is no express requirement that this be done every year, this type of  
20 review is usually done in an annual comprehensive amendment cycle, RCW  
21 36.70A.130(2)(a). The amendments adopted under this process may be appealed  
22 to the boards to determine whether the adopted amendments comply with the  
23 GMA; but these types of amendments are not required to ensure that the local  
24 jurisdiction's entire comprehensive plan and development regulations comply with  
25 all the provisions of the GMA.

26 The Board views Panesko's challenge as one based on the 2004 UGA expansion and any  
27 challenges to the process for expansion should have been brought in 2004, yet no  
28 challenge was filed. The present challenge to the Mossyrock UGA is therefore untimely.

29  
30  
31 <sup>24</sup> Lewis County Prehearing Brief at 12.

32 <sup>25</sup> See, Ordinance 1198: "Whereas, yearly the County considers amendments to the Comprehensive Plan and implementing development regulations as submitted by the public, staff and by incorporated cities". Nothing in the ordinance suggests that it is a seven year update under RCW 36.70A.130(1) and (4).

<sup>26</sup> 1000 Friends and Pro Whatcom v. Whatcom County, WWGMHB Case No. 04-2-0010 (Order on Motion to Dismiss, 8/2/04).

1 **Conclusion:** The County's mapping of the Mossyrock UGA expansion represents a map  
2 correction to reflect the UGA expansion approved in 2004. Petitioner may not challenge the  
3 basis for the 2004 expansion in this appeal. Petitioner's challenge is untimely pursuant to  
4 RCW 36.70A.290(2).  
5

6 Issues 4 and 7 both address the expansion of the Napavine UGA and therefore will be  
7 considered together.  
8

9 **Issue No. 4 (Panekso):** *Whether the Napavine description and UGA expansion in the*  
10 *comp plan and DR maps are noncompliant with RCW 36.70A.110(2), RCW 36.70A.170,*  
11 *RCW 36.70A.060, RCW 36.70A.070 preamble and RCW 36.70A.120 for failure to use*  
12 *current OFM numbers, failure to use a 20-year period, failure to permit urban densities,*  
13 *failure to use a reasonable land market supply factor, failure to be consistent (city=1531*  
14 *acres on page 4-12; UGA area=623 acres on page 4-13), overstatement of land needs not*  
15 *based on OFM projections, and for failure to identify and preserve ag land currently under*  
16 *invalidity.*

17 **Issue No. 1 (Futurewise):** *Does Lewis County's urban growth area expansion for*  
18 *Napavine violate RCW 36.70A.020(1-2, 5, 8-10, 12), 36.70A.060, 36.70A.070, 36.70A.110,*  
19 *36.70A.115, 36.70A.120, 36.70A.170, and 36.70A.172 by failing to show the County's work,*  
20 *failing to size the UGA to meet the land needs of the projected population according to OFM*  
21 *population estimates, failing to locate the urban growth area expansion in areas that are*  
22 *served by urban services and/or locating the expansion in areas that lack adequate capital*  
23 *facilities and/or a plan to provide them, and failing to locate the expansion in areas that are*  
24 *adjacent to or characterized by urban growth, and by including land with extensive critical*  
25 *areas and resource lands within the UGA?*

## 26 **Position of the Parties**

27 Panesko argues that there is no difference between the proposed UGA expansion of 863  
28 acres and the expansion of 845 acres which the Board held to be invalid in Case No. 06-2-  
29 0003, *Futurewise, et al v. Lewis County, et al.*<sup>27</sup> He asserts this acreage exceeds the 200-  
30 250 acres needed to meet OFM growth projections for the year 2025. Instead, Panesko  
31 claims that with a 25 percent market factor Napavine needs only 51 more acres to  
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<sup>27</sup> Panesko Prehearing Brief at 14.  
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1 accommodate its projected population growth.<sup>28</sup> He also points out the UGA expansion  
2 includes 262 acres of farmland currently under a Determination of Invalidity issued by this  
3 Board and is in an area not characterized by urban development. Panekso also alleges the  
4 comprehensive plan contains conflicting numbers for the acreage in the Napavine UGA and  
5 the City of Napavine, which he claims demonstrates a violation of RCW 36.70A.120.  
6

7 Petitioners Butler and Futurewise present four arguments with regard to their Legal Issue,  
8 all related to the City's Land Capacity Analysis (LCA). First, Petitioners contend the City of  
9 Napavine applied a market factor to the total amount of land needed to accommodate its  
10 2025 residential, commercial, industrial, and public and semi-public requirements, not to the  
11 land needed for the projected additional housing units and growth in these use categories.  
12 Second, Petitioners assert the market factors used are not reasonable, ranging from 100  
13 percent in some portions of the analysis to 50 percent in others. Third, Petitioners argue the  
14 City's LCA improperly deducts buildable land as though it is unbuildable. They also point  
15 out that while the City's comprehensive plan does not designate any green belts, it deducts  
16 them from the LCA. Fourth, Petitioners assert the LCA uses a density of 3.5 dwelling units  
17 per acre, rather than a more appropriate urban density. As a result of these alleged errors,  
18 Butler and Futurewise assert the City overstates the amount of land needed for its projected  
19 2025 needs.  
20  
21  
22

23 In addition, Petitioners argue that acreage utilized for the expansion of the Napavine UGA is  
24 neither characterized by urban growth nor adjacent to land characterized by urban growth.  
25 Finally, they argue the expanded UGA includes critical areas which should not be included  
26 in the UGA.  
27

28 In response, Napavine notes the GMA permits the use of market factors, and that it chose to  
29 apply a reasonable market factor after consideration of its local circumstances, such as the  
30 fact that more than one-half of Napavine's existing UGA consists of greenbelts and critical  
31  
32

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<sup>28</sup> Id.  
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1 areas that do not provide developable land.<sup>29</sup> In addition, Napavine argues that numerous  
2 in-city lots are undeveloped or underdeveloped and are likely to stay that way because  
3 existing houses are placed on large lots in a manner to preclude future development,  
4 developer-paid infrastructure costs are very high preventing redevelopment, and the  
5 existence of several large lots whose owner is preserving them for wildlife rather than  
6 development.<sup>30</sup>  
7

8 In response to Futurewise's assertion that Napavine's analysis applies the market factor to  
9 the total housing units needed in 2025, rather than the new units needed to accommodate  
10 the increase in population, Napavine points out that it applies the market factor to determine  
11 the total acreage required in its UGA to accommodate its allocated population. Napavine  
12 argues that excluding lands in the existing city from this calculation would understate  
13 needed land by failing to take into account market availability of the existing in-city lands.<sup>31</sup>  
14  
15

16 In response to Futurewise's allegation that its UGA is oversized, Napavine asserts the 601-  
17 acre UGA includes 242 acres that provide negligible development capacity but were  
18 included on the basis these lands were already receiving urban services.<sup>32</sup> Napavine  
19 argues it was appropriate for the needs analysis to deduct 787 acres for "greenbelts\critical  
20 areas" since the term is used to identify critical areas and also applies its more common  
21 term of "greenbelts."<sup>33</sup> Napavine also argues Futurewise incorrectly claims that there are  
22 only 284 acres of critical areas, relying on an outdated 1997 Napavine Comprehensive Plan  
23 when, in fact, the correct number is 787 acres.<sup>34</sup>  
24

25 Napavine claims Futurewise's insistence on a residential density of 3.5 du/acre is an  
26 attempt to impose a bright line standard of 4 du/acre as urban density, a standard not found  
27 in the GMA.  
28

29  
30  
31 <sup>29</sup> Napavine Prehearing Brief at 7.

32 <sup>30</sup> Id. at 7-8.

<sup>31</sup> Id. at 9.

<sup>32</sup> Id. at 10.

<sup>33</sup> Id. at 11.

<sup>34</sup> Id. at 12.

1 Napavine points out Futurewise has not challenged its Economic Development Needs  
2 justification for the Napavine UGA – the Hovee Report - which it argues is a significant  
3 driving force in Napavine’s need to grow. Napavine argues that there are few large lots  
4 available for commercial or industrial development near the city.

5  
6 Napavine notes the UGA expansion area is adjacent to the City limits and meets the  
7 locational requirements of the GMA, claiming that all properties are adjacent to territory that  
8 is located in relationship to an area with urban growth as to be appropriate for urban  
9 growth.<sup>35</sup> Further, Napavine argues it has adequate water and sewer capability to serve  
10 the UGA with urban levels of service.  
11

12  
13 Napavine points out that the methodologies and assumptions for determining future land  
14 needs were adopted as part of the 2006 Comprehensive Plan Update. Among the  
15 assumptions contained in that methodology are urban densities of at least 3.25 du/acre; a  
16 goal of establishing 30% of the city as a commercial and industrial land base; and a market  
17 factor of 100% for residential needs to reflect the limited opportunity for infill and the large  
18 amount of environmentally constrained lands in the area.<sup>36</sup> Napavine points out that these  
19 assumptions contained in the comprehensive plan were not timely appealed and may not be  
20 challenged now.  
21

22  
23 The County has joined in and incorporates by reference the arguments made by the City of  
24 Napavine.<sup>37</sup>  
25

26 In reply, Futurewise argues that it is not barred in its challenge to the needs analysis  
27 assumptions by its failure to challenge the 2006 Napavine comprehensive plan update.  
28 Futurewise points out that counties, not cities, designate UGAs, therefore its present  
29 challenge to Lewis County’s alteration of the Napavine UGA is timely.  
30

31  
32 <sup>35</sup> Id. at 15.

<sup>36</sup> Id. at 5.

<sup>37</sup> Lewis County Prehearing Brief at 14.



1 Futurewise disputes Napavine's attempt to base its market factor on local circumstances,  
2 such as the presence of critical areas and large lots. Futurewise argues that Napavine did  
3 not tie the extent of critical areas to the use of a market factor in its UGA petition; it has  
4 already deducted greenbelts and critical areas from the UGA in determining buildable lands;  
5 it allows development on geologically hazardous areas and hydric soils; and wetlands and  
6 fish and wildlife habitat areas have tradable development rights that could be transferred to  
7 other properties within the UGA.<sup>38</sup> With regard to the presence of large lots, Futurewise  
8 asserts that large lots comprise only 9.3% of the pre-expansion Napavine UGA, and  
9 therefore cannot justify a market factor of more than that percentage.  
10

11  
12 Panesko replies by asserting that Napavine is incorrect in stating that it is nearly encircled  
13 by lands subject to invalidity. He claims that there is an abundance of land adjoining  
14 Napavine as well as a significant amount of in-city property that will not be developed.<sup>39</sup> He  
15 also points out that the County plan shows a Napavine population of 960, which is out of  
16 date by 10 years and evidence that the County fails to keep its plan up to date.  
17

### 18 **Board Discussion**

19 Both Futurewise Issue 1 and Panseko Issue 4 raise issue with the County's expansion of  
20 the Napavine UGA. Petitioners set forth a variety of reasons for non-compliance, the  
21 Board will address each in turn.  
22

#### 23 *Land under invalidity*

24 Although Panekso has asserted that the County included within the UGA agricultural  
25 lands currently under invalidity, the Board finds the land referenced by Panesko was not  
26 included within the Napavine UGA expansion area.  
27  
28  
29  
30  
31  
32

---

<sup>38</sup> Id. at 9.

<sup>39</sup> Panesko Reply to Napavine at 2.

1 At the time of initial application for expansion of its UGA, Napavine sought 863 acres to  
2 accommodate anticipated growth.<sup>40</sup> However, the City noted that approximately 260 acres  
3 were currently subject to this Board's agricultural resource lands invalidity ruling and  
4 therefore, proposed a phased approach - adding approximately 600 acres in 2007 (Phase  
5 One) and approximately 260 acres upon the lifting of invalidity (Phase Two).<sup>41</sup> The County  
6 clearly disavowed this, with the Planning Commission noting "there is no mechanism for a  
7 phased approach" therefore, "inclusion of the 262 acres in the Napavine UGA should not  
8 be approved until the Invalidity Order is lifted."<sup>42</sup> The City notes that it modified its request  
9 and removed the areas subject to invalidity.<sup>43</sup> Therefore, Panesko's assertion is  
10 unsupported by the Record.  
11

### 12 *Timeliness*

13 Napavine correctly notes that, while the 2006 Napavine UGA expansion was remanded by  
14 the Board, the Board noted at that time: "No party contested any of the facts or arguments  
15 regarding the expansion of the Napavine and Chehalis UGAs presented by the  
16 Petitioners."<sup>44</sup> Nevertheless, the Board found that the analysis relied upon by the City did  
17 not support the UGA expansion:  
18  
19

20 In this case, the analysis of land required for urban uses in the Napavine UGA to  
21 2025 establishes a need for an additional 233 acres. No analysis was presented that  
22 demonstrates a need for the 854 acres by which the Napavine UGA was actually  
23 expanded. The GMA requires the local jurisdiction to "show its work" when  
24 establishing UGA boundaries. See *Bremerton, et al. v. Kitsap County*, CPSGMHB  
25 Case No. 95-2-0039c (Final Decision and Order, October 6, 1995) and *City of*  
26 *Tacoma et al. v. Pierce County*, CPSGMHB Case No. 94-3-0001 (Final Decision and  
27 Order, July 5, 1994.) Otherwise, there would be no way to ensure or review the local  
28 jurisdiction's analysis required by RCW 36.70A.110. Since no evidence before the  
29 Board supports a need for the 854 acres by which the Napavine UGA was enlarged,  
30 Lewis County Resolution No. 05-326, Attachment D fails to comply with RCW  
31 36.70A.110(1) and (2).<sup>45</sup>

32 <sup>40</sup> Index 118, UGA Petition.

<sup>41</sup> Index 118, UGA Petition, at 2.

<sup>42</sup> Ordinance 1198, Exhibit A, at 3 – Finding No. 3.

<sup>43</sup> Index 138, Correspondence to Lewis County from Napavine, November 13, 2007

<sup>44</sup> *Futurewise v. Lewis County*, WWGMHB No. 06-2-0003, FDO at 9 (8/2/06).

<sup>45</sup> Id. at 10.

1 Therefore, it does not advance Napavine's or the County's position to rely on the Board's  
2 2006 FDO in this manner.

3  
4 Rather than rely on determinations made in 2006 with regard to Napavine's comprehensive  
5 plan, it is appropriate for the Board to consider whether the County's action in regard to the  
6 current UGA expansion complies with the GMA. Authority to designate UGAs rests with  
7 counties, not cities.<sup>46</sup>  
8

9 Petitioners challenge the methodology and assumptions utilized by Napavine in determining  
10 its future land needs which, in turn, purportedly justify the UGA's size. The City notes its  
11 methodology provides for urban densities of at least 3.25 du/acre, a goal of establishing at  
12 least 30 percent commercial/industrial land, and a market factor of 100 percent for  
13 residential needs – with the urban density assumption and the market factor squarely being  
14 challenged by the Petitioners. Napavine contends the methodology and assumptions were  
15 adopted in 2006 and, therefore, any challenge is untimely.<sup>47</sup>  
16  
17

18 However, what is being challenged is not the City's analysis but rather the County's action,  
19 the jurisdiction having sole authority to designate UGAs,<sup>48</sup> in regard to the 2007 Napavine  
20 UGA expansion authorized by the challenged Resolution and Ordinance. Therefore, the  
21 Board concludes it is appropriate to review whether the *County's* reliance on the City's  
22 assumptions, complies with the GMA.  
23

#### 24 *Market factor methodology*

25 A market factor represents the estimated percentage of net developable acres contained  
26 within a UGA that, due to fluctuating market forces, is likely to remain undeveloped over the  
27 course of the 20-year planning period. The market factor recognizes that not all  
28 developable land will be put to its maximum use because of such things as owner  
29 preference, cost, stability, quality, and location and, therefore, the GMA permits jurisdictions  
30  
31

32 <sup>46</sup> RCW 36.70A.110(1).

<sup>47</sup> Napavine HOM Brief, at 1-2 (citing to *Futurewise v. Lewis County*, Case No. 06-2-0003), and 5.

<sup>48</sup> RCW 36.70A.110(1)

1 to include within a UGA not only the area necessary to accommodate projected growth but  
2 allows as a “safety factor” - the market factor – expressed as a percentage related to total  
3 acreage. The Board notes that the GMA does not define the term “market factor” except for  
4 setting a “reasonable” standard and permitting consideration of “local circumstances.”

5 Turning then to the current UGA expansion process, Futurewise has identified what the  
6 Board believes to be a fundamental error in the methodology employed to determine the  
7 amount of land included in the UGA.  
8

9  
10 In estimating the needed supply of land to accommodate its future population allocation, the  
11 City applied the market factor to the total 20 year housing units needed, rather than the  
12 growth in the projected housing units needed. As Futurewise points out, the existing  
13 housing units already exist, the market has already supplied the land needed to  
14 accommodate the existing population. By applying the market factor to existing units of  
15 housing, rather than those needed to accommodate growth, the City overstates the amount  
16 of land need to accommodate its year 2025 needs. The Board finds this error to be clearly  
17 erroneous, and a violation of RCW 36.70A.110(2) which requires counties to include areas  
18 and densities sufficient to permit the urban growth that is *projected to occur* for the  
19 succeeding twenty-year period.  
20

21  
22 Furthermore, in arriving at an appropriate market factor to support the expansion of UGA  
23 boundaries, the jurisdiction must “show its work.”<sup>49</sup> Otherwise, there would be no way to  
24 ensure or review the local jurisdiction’s analysis required by RCW 36.70A.110. Here the  
25 City’s land capacity analysis does not explain how it reached the market factors it employed,  
26 and in fact those market factors appear to be remarkably high. While the City’s Urban  
27 Growth Petition<sup>50</sup> does mention the presence of large lots that are unlikely to develop or  
28 redevelop, as well as the presence of greenbelts and critical areas, there is no explanation  
29 of how these potential constraints resulted in the selected market factor.  
30  
31  
32

---

<sup>49</sup> See, *Berschauer v. Tumwater*, WWGMHB Case No. 94-2-0002, FDO, (7/27/94).

<sup>50</sup> IR 118

1 Furthermore, if the presence of critical areas was used to support the market factor, it  
2 appears it was inappropriately used. Napavine's Needs Analysis in its Urban Growth  
3 Petition shows that 787<sup>51</sup> acres of greenbelts/critical areas were added to the total acreage  
4 of residential, community services, and public service lands "Area Needed" to arrive at the  
5 total acreage of urban areas needed.<sup>52</sup> The City cannot explain the need for a market factor  
6 based on the presence of critical lands, and then use the presence of critical lands to  
7 support an even larger UGA. This process amounts to double counting of critical areas  
8 overstates the land needed for UGA expansion.  
9

#### 10 *Density*

11  
12 Because the Board has found elsewhere in this Order that the County relied upon a flawed  
13 methodology in establishing the Napavine UGA, and remands the Napavine UGA to the  
14 County as non-compliant, it is not necessary to determine at this time whether the chosen  
15 density of 3.5 units per acre was a clearly erroneous violation of the GMA and an abuse of  
16 the discretion vested in the County by RCW 36.70A.3201. Instead, on remand, the County  
17 will be required to adopt a UGA for the City of Napavine using a methodology that does not  
18 contain the flaws identified in this Order. Such a revised UGA may have a different density,  
19 which will be reviewed under the standards of RCW 36.70A.110(2), if challenged.  
20

#### 21 *Not characterized by urban growth*

22  
23 In light of the Board's conclusion that the Napavine UGA was based on an inappropriate  
24 use of market factors, founded on total housing units rather than the area needed to  
25 accommodate *projected growth*, and the need for the County to reevaluate the size of the  
26 Napavine UGA, it is not necessary for the Board to address the question of whether the  
27 lands included are characterized by urban growth or adjacent to urban growth. Instead, the  
28 evaluation of the nature of the lands included, and their adjacent lands, should be deferred  
29 until the location of the Napavine UGA is sized based upon an appropriate methodology.  
30

31  
32 <sup>51</sup> Napavine notes in its Post Hearing Submission of Requested Documents, at 3, that the figure of 787 acres  
should instead have been 804 acres.

<sup>52</sup> See, IR 118 pp. 577-580.

1 **Conclusion:** While the Board does not address the question of whether the choice of  
2 urban densities in the Napavine UGA are clearly erroneous at this time, the Napavine UGA  
3 inappropriately applied a market factor to existing units of housing rather than those needed  
4 to accommodate projected growth. By so doing, it overstated the amount of land needed to  
5 accommodate its year 2025 needs. The Board finds this to be clearly erroneous and a  
6 violation of RCW 36.70A.110(2).  
7

8 Furthermore, the County failed to “show its work” to support the analysis required by RCW  
9 36.70A.110 when establishing a reasonable market factor to support the expansion of the  
10 UGA’s boundaries. A determination of whether the area ultimately selected for inclusion in  
11 the Napavine UGA is characterized by or adjacent to urban growth must wait until an  
12 appropriate methodology for determining the scale of the UGA expansion is employed.  
13  
14

15 **Issue No. 5:** *Whether the Toledo description and UGA expansion in the comp plan and*  
16 *DR maps are noncompliant with RCW 36.70A.110(2), RCW 36.70A.170, RCW 36.70A.070*  
17 *preamble and RCW 36.70A.120 for failing to be consistent (city limits=234 acres on page 4-*  
18 *14; UGA=117 acres on page 4-15), failure to use current OFM forecasts, failure to use a 20*  
19 *year period, and for requesting land to be included in the UGA which is under invalidity for*  
20 *failing to designate ARL.*

## 21 **Position of the Parties**

22 Panekso notes that the land added to the Toledo UGA is land under invalidity from a prior  
23 Board order. He further argues the density of 3 du/acre selected by the City for this acreage  
24 is not compliant with RCW 36.70A.110(2) which requires UGAs to permit urban densities,  
25 and is also inconsistent with Page 4-15 of the City’s CP which states that future residential  
26 densities will be at 5.5 du/acre for single family homes, 11 du/acre for duplexes, and 25  
27 du/acre for apartments. He claims the reduction of the Toledo UGA from 150.8 acres to 117  
28 acres is unexplained and inconsistent with staff statements made by county staff in public  
29 hearings.  
30  
31  
32

1 The County notes the adopted expansion of the Toledo UGA reflects a reduction from a  
2 larger proposal and is sized to include a 10-acre affordable housing development by and for  
3 the Cowlitz Indian Tribal Housing Authority.<sup>53</sup> The County contends that the Tribe's project  
4 will provide affordable housing for low income residents at relatively high densities.<sup>54</sup> It  
5 points out the City of Toledo is largely built out and there are only approximately 20 acres  
6 of vacant land in the City limits and UGA, some of which are constrained by critical areas  
7 leaving just 1.5 buildable acres in the City limits and 12 acres within the UGA.<sup>55</sup>  
8

9  
10 With regard to the alleged inconsistency in the Land Use Element between the size of the  
11 Toledo city limits (234 acres) and the unincorporated Toledo UGA area (117 acres), the  
12 County points out that the City limits incorporate 234 acres and the UGA area incorporates  
13 117 acres. The 234 acres of city land, plus the 117 acres of UGA combine for a total of 351  
14 acres.<sup>56</sup>  
15

16 The County points out that even if the Board has not lifted its prior order of invalidity, the  
17 Board's role in this proceeding is to determine compliance with the GMA, not its prior orders.  
18 In addition, the County argues that even if this land were designated ARL, the County would  
19 have found it more appropriate to use the land for the purpose of providing the City and  
20 Tribe with affordable housing and would have decided to de-designate the site.<sup>57</sup> This, the  
21 County points out, is consistent with GMA's requirement under RCW 36.70A.070(2)(d) to  
22 make adequate provisions for existing and projected needs of all economic segments of the  
23 community. The County also notes the expansion area is undeveloped but adjacent to City  
24 limits, with platted lots at approximately 4 du/acre to the east and with city sewer and water  
25  
26  
27  
28  
29  
30

31 <sup>53</sup> Lewis County Prehearing Brief at 14.

32 <sup>54</sup> Id. at 15.

<sup>55</sup> Id.

<sup>56</sup> Lewis County Prehearing Brief at 18-19.

<sup>57</sup> Id. at 19.

1 to the north.<sup>58</sup> The proposed development of 3 du/acre is not inconsistent with historical  
2 patterns of development within the City, the County asserts.<sup>59</sup>

3  
4 The County also points out that Panesko has failed to address the allegations regarding  
5 OFM forecasts in his briefing, therefore this claim should be deemed abandoned.<sup>60</sup>

6  
7 Cowlitz Indian Tribal Housing (CITH) contends the City of Toledo requested the UGA  
8 expansion on its behalf to provide land for the construction of affordable housing for low  
9 income American Indians.<sup>61</sup> Like the City asserts, CITH argues the Toledo UGA expansion  
10 meets the GMAs' affordable housing goal by providing affordable housing, not "market rate"  
11 housing, as Panesko has argued. CITH also argues the expansion does not substantially  
12 interfere with the GMA's goals because, consistent with RCW 36.70A.110(3), the expanded  
13 UGA acreage is adjacent to territory already characterized by urban growth and is  
14 appropriate for urban growth.<sup>62</sup> CITH contends the parcel is surrounded by the existing  
15 Toledo city limits on three sides and adjacent to property slated for the development of a 60-  
16 unit housing project.<sup>63</sup> CITH asserts the record indicates that additional land is needed for  
17 projected future growth in the City of Toledo over the next 20 years and this project is  
18 necessary to accommodate that growth. CITH also argues that there are adequate existing  
19 public facilities and service capacities to serve the proposed development on the expanded  
20 UGA parcel.<sup>64</sup> CITH maintains the proposed development will permit urban densities by  
21 constructing 30 units on a 10 acre parcel, with two acres of that parcel reserved for a  
22 greenspace/common area resulting in an actual build-out density of approximately 3.75  
23 du/acre.<sup>65</sup>  
24  
25  
26  
27  
28

29 <sup>58</sup> Id. at 20.

30 <sup>59</sup> Id. at 21.

31 <sup>60</sup> Id. at 19.

32 <sup>61</sup> CITH Prehearing Brief at 3.

<sup>62</sup> Id. at 7.

<sup>63</sup> Id. at 7-8.

<sup>64</sup> Id. at 9.

<sup>65</sup> Id. at 9-10.



1 CITH also argues the Toledo UGA expansion will not result in conversion or loss of  
2 protected agricultural lands.<sup>66</sup> It argues the expanded Toledo UGA parcel does not meet  
3 the definition of “agricultural lands” because it is characterized by urban growth, not  
4 primarily devoted to the production of agricultural products, and does not long-term  
5 significance for agricultural production.<sup>67</sup>  
6

7 CITH claims the County did “show its work” during the expansion of the Toledo UGA. It  
8 notes that claimed inconsistencies are merely the result of the normal evolution of a  
9 proposal during the planning process.<sup>68</sup> CITH next asserts the characterization of this  
10 expansion as “sprawl” is an improper challenge to a specific project proposal and thus not a  
11 proper issue for the Board to address. It also notes Panesko is urging the Board to address  
12 a “bright line” rule of minimum density, whereas the GMA creates a general framework  
13 providing local jurisdictions with a great deal of discretion in fashioning appropriate  
14 densities. In this case, CITH asserts the proposed density is consistent with the historical  
15 density pattern in the City of Toledo.<sup>69</sup>  
16  
17

18 Addressing the effect of the Board’s prior finding of invalidity, CITH asserts the Board’s role  
19 is to determine compliance with the GMA, not its own prior orders. In addition, CITH asserts  
20 the issue of invalidity is not relevant because the County has shown that the Toledo UGA  
21 expansion does not substantially interfere with the goals of the GMA. Further, CITH argues  
22 that the County’s action does not violate prior invalidity orders because the expansion is not  
23 reliant upon any of the invalidated County regulations or maps and instead is based on a  
24 determination that the parcel does not satisfy ARL designation criteria.  
25  
26  
27  
28  
29  
30

---

31 <sup>66</sup> Id. at 10.

32 <sup>67</sup> Id. at 11.

<sup>68</sup> Id. at 12-13.

<sup>69</sup> Id. at 15.

1 Finally, CITH argues that the Toledo UGA expansion is consistent with the Housing  
2 Cooperation Law which authorizes public bodies to plan and make exceptions from building  
3 regulations and ordinances to aid housing authorities operating within their boundaries.<sup>70</sup>  
4

5 In response, Panesko argues that because of invalidity, the County was obligated to move  
6 for the Board to rescind invalidity before this area could be included within the Toledo  
7 UGA.<sup>71</sup>  
8

### 9 **Board Discussion**

10 Panesko argues that it is inappropriate for the County to transfer lands into the Toledo UGA  
11 while such lands are still under invalidity. The Board agrees. The Board imposed a  
12 Determination of Invalidity in a February 13, 2004 Order, and again on June 7, 2008. Most  
13 recently, in the Board's combined Final Decision and Order and Compliance Order, issued  
14 on July 7, 2008,<sup>72</sup> the Board concluded that it would not lift invalidity from these lands until  
15 the County properly considered and designated its agricultural resource lands (ARL).  
16  
17

18 On the issue of the change in designation of lands whose designation and mapping are  
19 subject to an invalidity finding, the burden is on the County to show that the re-designation  
20 of lands whose designation is subject to a finding of invalidity no longer substantially  
21 interferes with the goals of the GMA:  
22

23 A county or city subject to a determination of invalidity made under RCW 36.70A.300  
24 or 36.70A.302 has the burden of demonstrating that the ordinance or resolution it has  
25 enacted in response to the determination of invalidity will no longer substantially  
26 interfere with the fulfillment of the goals of this chapter under the standard in RCW  
36.70A.302(1).

27 To overcome the invalidity determination, the County must demonstrate that the change in  
28 designation of those lands subject to a determination of invalidity to urban lands will no  
29 longer interfere with Goal 8. The appropriate time for the Board to consider whether the  
30

31 <sup>70</sup> Id. at 19.

32 <sup>71</sup> Panesko Reply to County at 7. Panesko Reply to CITH at 1-2.

<sup>72</sup> *Butler et al. v. Lewis County*, WWGMHB Case Nos. 99-2-0027c, 00-2-0031c, and 08-2-0004c, CO and  
FDO, 7/7/08.

1 County has adequately made that showing is following a motion to lift invalidity. Only after  
2 hearing arguments from both sides on that issue can the Board consider whether to modify  
3 an earlier finding of invalidity. Although CITH addressed this issue, in briefing joined by the  
4 County, it is clear that the focus of the HOM in this case was not on whether invalidity  
5 should be lifted or not, but whether the UGA could be expanded *despite* the earlier finding of  
6 invalidity. The Board cannot modify a Determination of Invalidity without a motion to do so,  
7 giving opposing parties adequate notice and opportunity to respond to this specific issue.  
8

9  
10 CITH contends the proposed UGA expansion is consistent with the “additional and  
11 supplemental authority” of the Housing Cooperation Law (HCL), RCW 35.83, and that the  
12 HCL “authorizes the City of Toledo and Lewis County to take the specific actions that they  
13 took ... even if such actions were outside the scope of the [GMA].”<sup>73</sup> In essence, CITH  
14 asserts the HCL pre-empts the GMA. The Board disagrees.  
15

16 The HCL was originally enacted in 1939 in response to a need for safe and sanitary housing  
17 conditions, especially in regards to dwelling accommodations for persons of low-income.<sup>74</sup>

18 The purpose of the HCL was to deem the remedying of these unfit conditions as a public  
19 use and purpose and an essential governmental function for which public money and aid  
20 may be used and provide assistance to housing authorities in this regard. RCW  
21 35.83.030(1) defines “housing authority” as any housing authority *created pursuant to the*  
22 *housing authorities law of this State*. RCW 35.82, the Housing Authorities Law, provides for  
23 the establishment of housing authorities by cities and counties, not by tribal governments.  
24 CITH was not established pursuant to RCW 35.82, it was established under the authority  
25 vested in the Cowlitz Tribal Council by the Constitution of the Cowlitz Indian Tribe.<sup>75</sup> Thus,  
26 CITH is not a “housing authority” as provided by the HCL and, therefore the HCL is  
27 inapplicable.  
28  
29

30  
31 <sup>73</sup> CITH Prehearing Brief, at 20.

32 <sup>74</sup> RCW 35.83.010; The HCL was last amended in 1991 by EHB 1740. The amendments authorized by EHB  
1740 added the phrase “that state of Washington” to RCW 35.83.020(3) and the word “grant” to RCW  
35.83.030(1).

<sup>75</sup> CITH Prehearing Brief, Exhibit 283, Tribal Council Ordinance 06-01.

1 Furthermore, although the CITH is securing funding from the federal government via  
2 NAHASDA,<sup>76</sup> the federal government itself is not undertaking the development of this site, it  
3 is the Cowlitz Tribal Nation through its own housing authority. And, therefore although the  
4 HCL, at RCW 35.83.020(2), defines a “housing project” to include an undertaking of the  
5 federal government and, pursuant to RCW 35.83.030, addresses housing projects, the mere  
6 provision of funding does not transform the federal government into the project’s proponent.  
7

8 Lastly, the Board finds it must respond to CITH’s assertion that the HCL has a broad, pre-  
9 emptive scope which allows for cities and counties to act outside of the scope of the GMA’s  
10 mandate.<sup>77</sup> As noted *supra*, the HCL was adopted in 1939 and was last amended in 1991,  
11 after the adoption of the GMA, but only in regards to slight modifications to existing  
12 provisions. The GMA was enacted in response to a statewide need for planned and  
13 coordinated growth and seeks to, among other things, reduce sprawl, protect the  
14 environment, maintain and enhance natural resource industries, ensure public facilities and  
15 services, and encourage affordable housing. Although discretion and deference is given to  
16 local jurisdictions, there is no indication in either piece of legislation to indicate that the GMA  
17 is subordinate to the HCL nor is there any language in the HCL which appears to provide for  
18 an exemption from the requirements of any other state law, including the GMA.  
19  
20

21  
22 The Board does not consider the case of *Mercy v. City of Seattle*<sup>78</sup> instructive on this point.  
23 In that case, the Court held Seattle could grant an exemption to a local housing authority  
24 from the city’s municipal parking regulations. While RCW 35.83.030(4) allows a state public  
25 body to “ Plan or replan, zone or rezone any part of such state public body; make  
26 exceptions from building regulations and ordinances; any city or town also may change its  
27 map;” (emphasis added), nothing appears to provide for an exemption from the  
28 requirements of other state law, in this case, the GMA.  
29  
30

31  
32 <sup>76</sup> Native American Housing Assistance and Self-Determination Act of 1996, 25 USC 4101 *et seq*

<sup>77</sup> CITH cites to a 1967 case *Mercy v. Seattle*, 71 Wn.2d 556, to support this assertion. This case dealt with  
Seattle’s exemption of a housing authority’s project from the city’s own parking code, not for a state law.

<sup>78</sup> 71 Wn.2d 556, 429 P.2d 917 (1967).

1 With regard to the alleged discrepancy between the size of the City limits (234 acres) and  
2 the unincorporated UGA area (117 acres), the Board finds no error and accepts the  
3 County's explanation that these are two separate concepts -- the UGA area of 117 is  
4 shown on page 4-15 of the Land Use Element. The City of Toledo city limits includes 234  
5 acres as shown on page 4-14. Combined, they total 351 acres.

7 The Board notes that CITH has presented a persuasive case for inclusion of this parcel  
8 within the Toledo UGA. However, for the reasons just stated, the County must first move for  
9 a lifting of invalidity on the affected parcels before this land can be considered for inclusion  
10 in the UGA.  
11

12 **Conclusion:** The change in designation of rural lands to include them in the expanded  
13 Toledo UGA was not accompanied by a showing that the new designation and mapping of  
14 those lands no longer substantially interferes with Goal 8 of the GMA thereby demonstrating  
15 that the Board's Determination of Invalidity should be removed. Inclusion of those lands into  
16 the expanded Toledo UGA without such a showing fails to comply with the GMA  
17 requirements to designate and conserve agricultural lands of long-term commercial  
18 significance. RCW 36.70A.060(1) and 36.70A.170. The invalidity determination was  
19 imposed to preserve those rural lands for consideration for designation as agricultural  
20 resource lands once the County adopts compliant designation criteria.  
21  
22

23  
24 Although the land designated for the Toledo UGA expansion may be appropriate for  
25 inclusion in the UGA, the County may not expand the UGA to include land under invalidity.  
26 Only after invalidity has been lifted from the affected parcels may the County include this  
27 land in the UGA.  
28

29 **Issue No. 6:** *Whether the proposed expansion of the Rural Area Industrial Curtis Rail Yard*  
30 *(Curtis Pole Yard) LAMIRD from approximately 138 acres of historical pole yard use to 368*  
31 *acres of new industrial/commercial use in Resolution 07-359 and Ordinance 1198 is*  
32 *noncompliant with RCW 36.70A.120, RCW 36.70A.070 preamble, RCW 36.70A.170, RCW*  
*36.70A.060, and RCW 36.70A.070(5)(d) for (1) failure to adhere to the Board's June 30,*

1 2000 order of invalidity for the nearly identical expansion of the Pole Yard LAMIRD from 138  
2 acres to 357 acres, (2) for characterizing the LAMIRD limitation to 138 acres in 2002 as “an  
3 error” rather than recognizing the limitation to 138 acres (the 1993 footprint of the pole yard)  
4 was to lift invalidity, (3) for failing to including a description of the expanded LAMIRD in the  
5 comp plan or development regulations, (4) for failing to adhere to the built environment of  
6 138 acres as established on July 1, 1993, (5) for removing ARL from the adjoining land  
7 given its historical use for raising peas and corn for the local frozen food processor, (6) for  
8 failing to acknowledge that the adjoining land was ever used for raising peas and corn, i.e.  
9 failing to perform a historical analysis of recent agriculture use in the 1990s, (7) for failing to  
10 establish development regulations which maintain the July 1, 1993 boundaries of the  
11 LAMIRD, (8) for failing to establish development regulations which protect land capable of  
12 being farmed surrounding the Curtis Pole Yard LAMIRD and (9) for arguing in Ordinance  
13 1198/Resolution 07-359 that parcels should have just one designation whereas the previous  
14 Ordinance 1197/Resolution 07-306 (adopted on November 5, 2007) includes provisions for  
15 a parcel to have multiple designations depending on the soil type variation within the  
16 parcel?

## 16 **Position of the Parties**

17 Panesko argues that this Board has already determined that a LAMIRD of 357 acres  
18 encompassing the Curtis pole yard is invalid.<sup>79</sup> He argues that, in 1993, there was no  
19 development in this area, beyond approximately 100 acres, and therefore the balance of  
20 approximately 257 acres does not qualify as a LAMIRD. He points out the easterly and  
21 northerly portions of the 357 acre site have been used for commercial agriculture, raising of  
22 peas and corn in the early 1990s and has been zoned ARL and recently de-designated from  
23 ARL designation.  
24

25  
26 Intervenors McFarland Cascade and Port of Chehalis (MCPC) note the Curtis Rail Yard is  
27 comprised of five parcels which were developed by Weyerhaeuser in the 1970’s to be a mill  
28 site served by rail. This site has been used as a rail reload and pole manufacturing  
29 facility.<sup>80</sup> McFarland Cascade owns four of the five parcels and uses them to peel, frame,  
30 and air-season utility poles. The remaining 40 acre parcel is owned by the Port of Chehalis.  
31  
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<sup>79</sup> Panesko’s Prehearing Brief at 22.

<sup>80</sup> MCPC Prehearing Brief at 1-2.

1 MCPC points out that, while the Curtis site was designated as a Type 1 LAMIRD in 2002,  
2 based on more detailed documentation of the historic use of the Curtis site, staff concluded  
3 a mapping error had occurred and the site should be designated as a Type 3 LAMIRD.  
4 The Planning Commission recommended this change and the Board of County  
5 Commissioners adopted the Planning Commission's recommendations.  
6

7 MCPC notes Panesko bears the burden of proving, based on the record, that the  
8 designation of the Curtis Type 3 LAMIRD was clearly erroneous. MCPC points out the only  
9 document Panesko cited from the record supports the designation of the site as a  
10 LAMIRD.<sup>81</sup>  
11

12 MCPC notes the record shows: (1) the entire site was prepared to be a mill in 1975; (2) the  
13 infrastructure to support the pole yard runs throughout the entire site; (3) the railroad owned  
14 by the Port serves this entire area; and (4) the rail spur serving the pole yard exists on the  
15 Port's parcel.<sup>82</sup> MCPC further asserts the record shows that the five parcels in question  
16 contained non-residential uses in July 1993 and the fact that portions of those parcels may  
17 not have been physically occupied by the pole yard is not relevant as a LAMIRD is defined  
18 by lot boundaries.  
19  
20

21 MCPC also argues RCW 36.70A.070((5)(d)(iii)) should be read so that the term "small scale"  
22 applies to "new uses" such that the statute would be read to mean there is no requirement  
23 that existing non-residential uses be small scale.  
24

25 Noting that the Board has ruled a county may revise LAMIRD boundaries based on  
26 subsequent analysis, so long as the revised boundaries comply with the GMA, MCPC points  
27 out Panesko has not addressed the requirements for a Type 3 LAMIRD. Further, MCPC  
28 points out Panesko has not briefed the portion of Issue 6 which addresses the adoption of  
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<sup>81</sup> Id. at 9.

<sup>82</sup> Id. at 10.

1 maps and descriptive text for the LAMIRD. In any event, MCPC asserts the County has  
2 adopted a description of the Curtis Rail Yard in its plan.

3  
4 The County has joined in and incorporates by reference the arguments made by McFarland  
5 Cascade Corporation and the Port of Chehalis.<sup>83</sup>

6  
7 In response, Panesko disputes that the Curtis Rail Yard is, in fact, a Type 3 LAMIRD. He  
8 notes that only the map was changed by the County and nothing in the record demonstrates  
9 such a change.<sup>84</sup> Panesko further asserts there is no justification for the LAMIRD  
10 expansion, as the existing pole yard has adequate room for expansion within the existing  
11 boundaries of the LAMIRD.<sup>85</sup>

12  
13  
14 Panesko also argues portions of the land sought for inclusion in the LAMIRD have been  
15 under invalidity since 2004 and should not be included until invalidity is lifted.<sup>86</sup>

16  
17 Panesko also disputes portions of parcels 19482-1-4 and 1951-2 were left out of the  
18 LAMIRD by mistake in 2002. He claims the undeveloped portions of those parcels were  
19 undeveloped in 1993 and did not qualify for inclusion in a LAMIRD.<sup>87</sup>

20  
21 With regard to the 1975 photograph relied upon by MCPC, Panesko disputes this  
22 photograph is an accurate rendering of actual conditions on the ground. He claims the  
23 photograph does not show infrastructure on the site, rather it merely shows grubbing activity  
24 and that there is no evidence of what infrastructure was left from the 1975 activities.  
25

## 26 **Board Discussion**

27  
28 As an initial matter, the Board does not find there is sufficient evidence in the record that  
29 the Curtis Rail Yard is a Type 3 LAMIRD.<sup>88</sup> While MCPC notes that County staff concluded  
30

31 <sup>83</sup> Lewis County Prehearing Brief at 21.

32 <sup>84</sup> Panesko Reply to McFarland/Port at 2.

<sup>85</sup> Id. at 3.

<sup>86</sup> Id at 4-5.

<sup>87</sup> Id. at 6.



1 the entire Curtis Rail Yard should be designated as a Type 3 LAMIRD, the Planning  
2 Commission approved of the amendments contained in the staff report, and the staff report  
3 was adopted as part of Ordinance 1198, this does not provide a sufficient rationale. It is not  
4 disputed that the County designated 160 acres of the Curtis site as a Type 1 LAMIRD<sup>89</sup> in  
5 2002<sup>90</sup>. Although the GMA does not require a particular process for re-designating the  
6 classification of a LAMIRD, more than a mere reference to a staff report is required to effect  
7 a designation change. However, establishing the appropriate classification of this LAMIRD  
8 does not resolve this issue. As with the Toledo UGA expansion, land included in the Curtis  
9 Rail Yard LAMIRD east of the railroad is under an Order of Invalidity. That invalidity  
10 determination was left in place by this Board's recent Compliance Order/FDO of July 7,  
11 2008 in Case Nos. 99-2-0027c, 00-2-0031c, 08-2-0004c. Until the County moves for  
12 removal of invalidity and demonstrates that invalidity should be lifted as to this land, it is  
13 inappropriate to designate it as a LAMIRD, no matter what type the LAMIRD is.  
14

15  
16 The Board further notes that designation of land as a Type 1 LAMIRD requires the areas  
17 included be delineated predominantly by the *built* environment.<sup>91</sup> Mere clearing and  
18 grubbing of the land does not satisfy this requirement, the GMA seeks man-made  
19 structures. The evidence presented at the hearing failed to show the presence of such man-  
20 made structures including infrastructure, such as utilities.  
21

22  
23 **Conclusion:** The record does not demonstrate that the County designated the Curtis Rail  
24 Yard as a Type 3 LAMIRD. In addition, until invalidity has been removed from the affected  
25 land, it is premature to consider it for inclusion within a LAMIRD.  
26  
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31 <sup>88</sup> A LAMIRD designated in accordance with RCW 36.70A.070(5)(d)(iii).

32 <sup>89</sup> A LAMIRD designated in accordance with RCW 36.70A.070(5)(d)(i).

<sup>90</sup> MCPC Prehearing Brief at 4.

<sup>91</sup> See, RCW 36.70A.070(5)(d)(iv).

## V. FINDINGS OF FACT

1. Lewis County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.76A.040.
2. On December 10, 2007 the County adopted Ordinance 1198, and Resolution 07-359.
3. Petitioners participated in the process to adopt Ordinance 1198 and Resolution 07-059.
4. On January 22, 2008, Vince Panesko filed a timely Petition for Review.
5. On February 19, 2008, Petitioners Eugene Butler and Futurewise filed a timely Petition for Review.
6. On November 26, 2007, the Lewis County BOCC passed Resolution 07-326 adopting amended population allocations for Lewis County and increasing the Birchfield FCC population allocation from 3,000 to 6,300.
7. Both ordinance 1198 and Resolution 07-359 made reference to the population allocation amendment and attached the Lewis County Planning Commission's recommendation to the BOCC that the Birchfield FCC population allocation be amended from 3,000 to 6,300.
8. Neither Ordinance 1198 nor Resolution 07-359 amended the Lewis County Comprehensive Plan to reflect the revised population allocations for the Birchfield FCC and Lewis County.
9. The Comprehensive Plan amendments to Table 4.1 do not match the text of the amendments. While Table 4.1 shows 5,537 new acres in urban areas, the plan text describes 689 new acres.
10. Table 4.1 shows a 5,537 acre increase in urban areas with no decrease in other areas.
11. The expansion of the Mossyrock UGA was approved by the County in 2004 in order to better protect uses near a water system's wellhead.
12. The County Planning Commission recommended approval of this expansion, and on December 20, 2004, the Board of County Commissioners approved the City of

1 Mossyrock's UGA expansion proposal in Resolution 04-413. No appeal of that  
2 decision was filed.

3 13. Later, the County determined that, although this UGA expansion had been approved,  
4 it had inadvertently not been mapped. The County corrected this error through the  
5 adoption of Ordinance 1198, which was an annual update of its Comprehensive Plan,  
6 pursuant to RCW 36.70A.130(2).  
7

8 14. At the time of initial application for expansion of its UGA, Napavine sought 863 acres  
9 to accommodate anticipated growth. Napavine initially adopted a phased approach -  
10 adding approximately 600 acres in 2007 (Phase One) and approximately 260 acres  
11 upon the lifting of invalidity (Phase Two).  
12

13 15. Napavine modified its request and removed the areas subject to invalidity.

14 16. In estimating the needed supply of land to accommodate its future population  
15 allocation, Napavine applied the market factor to the total 20 year housing units  
16 needed, rather than the growth in the projected housing units needed.

17 17. As the existing housing units already exist, the market has already supplied the land  
18 needed to accommodate the existing population. By applying the market factor to  
19 existing units of housing, rather than those needed to accommodate growth,  
20 Napavine overstated the amount of land need to accommodate its year 2025 needs.  
21

22 18. Napavine's land capacity analysis does not explain how it reached the market factors  
23 it employed. While Napavine's Urban Growth Petition does mention the presence of  
24 large lots that are unlikely to develop or redevelop, as well as the presence of  
25 greenbelts and critical areas, there is no explanation of how these potential  
26 constraints resulted in the selected market factor.

27 19. Napavine's Needs Analysis in its Urban Growth Petition shows that 787 acres of  
28 greenbelts/critical areas were added to the total acreage of residential, community  
29 services, and public service lands "Area Needed" to arrive at the total acreage of  
30 urban areas needed. As the presence of critical areas was already used to support  
31 the market factor, double counting of critical areas overstates the land needed for  
32 UGA expansion.

- 1 20. The land added to the Toledo UGA is land under invalidity from a prior Board order.
- 2 21. The Board imposed a Determination of Invalidity affecting the land in the Toledo UGA
- 3 in a February 13, 2004 Order, and again on June 7, 2008.
- 4 22. In the Board's combined Final Decision and Order and Compliance Order, issued on
- 5 July 7, 2008, the Board concluded that it would not lift invalidity from these lands until
- 6 the County properly considered and designated its agricultural resource lands (ARL).
- 7 23. The UGA area of 117 is shown on page 4-15 of the Land Use Element. The City of
- 8 Toledo city limits includes 234 acres as shown on page 4-14. Combined, they total
- 9 351 acres. There is no discrepancy between the size of the City limits (234 acres)
- 10 and the unincorporated UGA area (117 acres).
- 11 24. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.
- 12
- 13

## 14 VI. CONCLUSIONS OF LAW

- 15 A. The Board has jurisdiction over the parties to this action.
- 16 B. The Board has jurisdiction over the subject matter of this action.
- 17 C. Petitioners Panekso, Futurewise and Butler have standing to raise the issues in this
- 18 case.
- 19 D. Lewis County's failure to include the population allocation amendment for the
- 20 Birchfield FCC within the land use element of the plan was a violation of RCW
- 21 36.70A.070(1).
- 22 E. While information such as contained in Table 4.1 may be difficult to keep current
- 23 between updates, such information must be accurate at the time of adoption. The
- 24 information contained in Table 4.1 did not accurately reflect modifications to urban
- 25 and rural lands acreage facilitated by the challenged actions, and therefore does not
- 26 comply with RCW 36.70A.070. The County must amend Table 4.1 to reflect an
- 27 accurate summary of lands within cities, unincorporated UGAs and rural areas.
- 28 F. The County's mapping of the Mossyrock UGA expansion represents a map
- 29 correction to reflect the UGA expansion approved in 2004. Petitioner may not
- 30
- 31
- 32

1 challenge the basis for the 2004 expansion in this appeal. Petitioner's challenge is  
2 untimely pursuant to RCW 36.70A.290(2).

3 G. The Napavine UGA inappropriately applied a market factor to existing units of  
4 housing rather than those needed to accommodate projected growth. By so doing, it  
5 overstated the amount of land needed to accommodate its year 2025 needs. The  
6 Board finds this to be clearly erroneous and a violation of RCW 36.70A.110(2).  
7

8 H. The County failed to "show its work" to support the analysis required by RCW  
9 36.70A.110 when establishing a reasonable market factor to support the expansion  
10 of the UGA's boundaries.

11 I. The change in designation of rural lands to include them in the expanded Toledo  
12 UGA was not accompanied by a showing that the new designation and mapping of  
13 those lands no longer substantially interferes with Goal 8 of the GMA thereby  
14 demonstrating that the Board's Determination of Invalidity should be removed.  
15 Inclusion of those lands into the expanded Toledo UGA without such a showing fails  
16 to comply with the GMA requirements to designate and conserve agricultural lands of  
17 long-term commercial significance. RCW 36.70A.060(1) and 36.70A.170. The  
18 invalidity determination was imposed to preserve those rural lands for consideration  
19 for designation as agricultural resource lands once the County adopts compliant  
20 designation criteria.  
21

22 J. The County may not expand the Toledo UGA to include land under invalidity. Only  
23 after invalidity has been lifted from the affected parcels may the County include this  
24 land in the UGA.  
25

26 K. The record does not demonstrate that the County designated the Curtis Rail Yard as  
27 Type 3 LAMIRD.

28 L. Until invalidity has been removed from the affected land in the Curtis Rail Yard, it is  
29 premature to consider it for inclusion within a LAMIRD.  
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31 M. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.  
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## VII. ORDER

Based on the foregoing, the County is ordered to bring its comprehensive plan into compliance with the Growth Management Act pursuant to this decision within 180 days. The following schedule for compliance, briefing and hearing shall apply:

Item	Date Due
<b>Compliance Due</b>	<b>February 19, 2009</b>
Compliance Report and Index to Compliance Record	February 26, 2009
Objections to a Finding of Compliance	March 19, 2009
Response to Objections	April 9, 2009
<b>Compliance Hearing</b>	<b>April 16, 2009</b>

DATED this 15th day of August 2008.

James McNamara, Board Member

William Roehl, Board Member

Concurring Opinion:

While I agree with the conclusions drawn by my colleagues in this order, I write separately because I believe some of the issues raised by Petitioners should have been acknowledged or addressed more directly. Specifically, issues regarding the addition of land under a finding of invalidity to the City of Mossyrock, the lack of analysis of the City of Napavine's industrial and commercial needs and the appropriate urban densities for the City of Napavine's UGA deserve more discussion.

Addition of Land to the Mossyrock UGA

1 Petitioner Panesko argues the land that the County has added to the Mossyrock UGA is  
2 still under an order of invalidity and was not appropriate for addition to the UGA.<sup>92</sup> The  
3 County adopted ARL designations on September 8, 2003. The Board found these  
4 designations noncompliant and invalid on February 21, 2004, and then in May 2004  
5 modified this decision to ensure those rural lands that contained prime soils and had been  
6 recently devoted to agricultural could be considered for ARL designation.<sup>93</sup> This land met  
7 those criteria. In December 2004, the County added this land to the UGA even though  
8 invalidity had not been lifted. Nevertheless, I agree with my colleagues that the time to  
9 challenge whether it was appropriate to add this land to the UGA was 60 days from the date  
10 the County published notice of the action to add land to the UGA.<sup>94</sup>  
11  
12

### 13 Napavine's Commercial and Industrial Needs

14 Futurewise asserts that neither the City of Napavine nor the County has appropriately  
15 analyzed its commercial and industrial needs. I agree. Napavine's 2006 Comprehensive  
16 Plan update states that it has 230 acres which have either been designated as commercial  
17 or are being used for commercial uses. To maintain the same ratio of commercial lands to  
18 support its current development pattern the City needs 172.5 more acres. The County has  
19 470 acres of industrial lands that are either developed or designated as industrial and will  
20 need 172.5 more acres to maintain its current development pattern.<sup>95</sup> However, determining  
21 the percentage of land based on the current, low density development that Napavine's land  
22 capacity analysis contemplates continuing, only adds to the UGA's sprawl potential.<sup>96</sup> The  
23 City's economic development element shows Lewis County's higher than average  
24 unemployment rate and poverty rate and lower than average job growth rate,<sup>97</sup> and the  
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28  
29 <sup>92</sup> Id at 9.

30 <sup>93</sup> Order Finding Noncompliance and Imposing Invalidity (February 13, 2004), Order Reconsidering the Extent  
31 of Invalidity (May 21, 2004).

32 <sup>94</sup> Also see *Habitat Watch v. Skagit County*, 155 Wn.2d 397 (2005)

<sup>95</sup> City of Napavine 2006 Comprehensive Plan Update at 17.

<sup>96</sup> Commercial strip development is another widely recognized form of sprawl that the GMA directs to be  
reduced or minimized.

<sup>97</sup> Id at 43.

1 County has identified lands with the help of a consultant to identify lands with economic  
2 development potential. However these two components do not constitute an analysis of the  
3 County's or City's commercial and industrial needs. The Department of Community, Trade,  
4 and Economic Development, the state agency charged with helping counties and cities  
5 implement the GMA, has provided guidance on how to determine industrial needs.<sup>98</sup>  
6 Additionally, this Board has ruled favorably when counties and cities have worked together  
7 to determine their commercial and industrial needs and then decided how to allocate them  
8 before adding land to the UGA. <sup>99</sup> Having an adequate rationale is a needed component for  
9 determining how much industrial and commercial land should be added to the UGA and for  
10 sprawl prevention.  
11

#### 12 13 Densities Used in Napavine's Urban Growth Analysis

14 Both Petitioners Futurewise and Panesko argue the use of the current density of 3.2 units  
15 per acre in the City of Napavine's land capacity analysis does not comply with RCW  
16 36.70A.110 and RCW 36.70A.020(1) and (2). I agree for the following reasons.  
17

18 Upon the adoption of the GMA, land use regulation in Washington was transformed from the  
19 solitary domain of local jurisdictions to a comprehensive, coordinated, planned system  
20 which recognizes common goals at a state-wide level.<sup>100</sup> In other words, *the GMA was*  
21 *enacted to institute a change in land use planning, not a perpetuation in the style of*  
22 *planning that was the impetus for the enactment itself.* With the GMA's adoption, a  
23 statutory framework was established which seeks to create vibrant, economically-strong  
24 communities where citizens can enjoy a high quality of life in a fiscally and environmentally  
25 responsible manner through the implementation of a variety of tools to balance diverse  
26 community interests. Of the many tools, I see the most important tool available to  
27 communities is the ability to increase the density of existing and new areas of the  
28  
29  
30

31 <sup>98</sup> Preparing the Heart of Your Comprehensive Plan, A Land Use Element Guide at 53-63.

32 <sup>99</sup> See Futurewise v. Skagit County (Final Decision and Order (September 21, 2005) and Consolidated  
Compliance Order and Final Decision and Order (April 5, 2005) and Irondale Community Action Neighbors v.  
Jefferson County, WWGMHB Case No.03-2-0010c(August 22, 2003).

<sup>100</sup> RCW 36.70A.010



1 community by adopting policies and regulations to support infill development, encourage the  
2 rehabilitation and reuse of existing structures, enable the more efficient and cost effective  
3 delivery of public facilities and services, and facilitate denser development in urban areas to  
4 lessen the demand for the conversion of resource lands and to promote affordable housing.

5  
6 The City of Napavine's CP notes a 2005 population of 1,328 and has identified a 2025  
7 population of 3,060, an increase of 130 percent. The City further notes 609 existing  
8 residential units within the Napavine city limits and the unincorporated portions of the UGA,  
9 thereby requiring 701 new residential units to accommodate this population growth (based  
10 on 2.4 persons per household). The City has adopted a policy to *maintain the existing*  
11 *density of 3.25 dwelling units per acre along with a market factor of 100%* for residential  
12 needs to reflect limited opportunity for infill development and environmentally-constrained  
13 lands.<sup>101</sup> Based on these calculations, the City initially sought approximately 863 acres of  
14 lands for expansion in order to provide adequate housing, establish an economic base, and  
15 promote job growth for the additional population projected for 2025.<sup>102</sup> This requested  
16 acreage was later reduced to the 600 acres, which was the expansion area granted by the  
17 County.  
18  
19

20  
21 The GMA does define *urban growth*, with this term referring to development that makes  
22 intensive use of land for buildings, structures, and impermeable surfaces so as to be  
23 incompatible with the use of the land for natural resource production.<sup>103</sup> Therefore, urban  
24 density is premised on the concept of growth adversely impacting a site's capacity for  
25 natural resource production. The primacy of containing urban growth within the UGA and  
26 the mandate to conserve the State's irreplaceable natural resource lands are foundational  
27 elements of the GMA.<sup>104</sup> But the GMA does not just seek to assign labels to land, it  
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30 <sup>101</sup> *City of Napavine Comprehensive Plan*, Land Use Element.

31 <sup>102</sup> Index 118, City of Napavine Urban Growth Area Petition

32 <sup>103</sup> RCW 36.70A.030(18)

<sup>104</sup> RCW 36.70.110(1); RCW 36.70A.170; *Redmond v. CPSGMHB*, 136 Wn.2d 38, 48 (1998) (Recognizing the importance of natural resource lands in GMA planning by the requirement that such lands be designated before UGA boundaries were established)

1 requires cities and counties to ensure public facilities and services demanded by their  
2 citizens are adequate and available, it seeks to provide housing for all economic segments  
3 of the community, to preserve open spaces for wildlife habitat and recreational  
4 opportunities, to conserve natural resource lands, to protect critical areas such as streams  
5 and wetlands, and much more. These foundational elements are woven throughout the  
6 GMA and create a structural framework guiding jurisdictions in accomplishing the tenets  
7 set forth by the GMA. The City of Napavine is required to conform to these foundational  
8 elements and, therefore, the question is whether the City, in coordination with the County, is  
9 calculating their UGA land needs based on these parameters so as to prevent the  
10 unneeded expansion of its UGA boundaries into neighboring rural and natural resource  
11 lands.  
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13  
14 Although no specific numerical definition for urban density is provided in the GMA, the  
15 “general rule of thumb” Futurewise advocates is not one derived from the law but from  
16 sound planning principles that seek to provide efficient and economic public facilities and  
17 services to any community. It is common knowledge that low-density development  
18 demands more roads and expansive water and sewer lines and, by stretching these basic  
19 and necessary services over large geographical areas a great burden is placed on the local  
20 government mandated to provide these services. The GMA acknowledges this in Goal 2 by  
21 directing that low density development be reduced or minimized – RCW 36.70A.020(2).  
22 But, a community’s fiscal health is only one of many benefits of density at urban levels. A  
23 recent report noted that density helps to create walkable neighborhoods, supports housing  
24 choices and affordability, expands transportation options, improves security, and protects  
25 the environment.<sup>105</sup> The cost of low-density development is therefore well documented, yet  
26 the City, in its Petition for UGA expansion notes that there are lots within the existing UGA  
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31 <sup>105</sup> *Creating Great Neighborhoods: Density in Your Community*, Local Government Commission in  
32 cooperation with the U.S. Environmental Protection Agency and the National Association of Realtors (2003).  
This report also noted it costs a Western US city \$10,000 more to provide infrastructure to a lower density  
suburban development than to a more compact urban neighborhood, with infrastructure cost per housing unit  
dropping dramatically as density increases.

1 that require improvements that are too costly to justify new development.<sup>106</sup> Which makes  
2 me wonder, just how will the infrastructure cost for new development within the expanded  
3 UGA be paid for if improvements within the existing area are too costly? Further, the City of  
4 Napavine has a zone that requires a maximum lot size of one unit per 40,000 square feet,  
5 which is clearly not an urban density or one that can be efficiently or cost effectively served  
6 by urban services of sewer and water. Further, Napavine's zoning code provides no  
7 mechanism to insure that low densities will not be continued throughout the UGA.<sup>107</sup>  
8

9  
10 I acknowledge the GMA encourages local jurisdictions to preserve existing housing and to  
11 ensure the vitality and character of established residential neighborhoods.<sup>108</sup> However, the  
12 goal of preserving this existing character does not equate to the architectural topography of  
13 a city or county to be frozen in time. There is nothing in the GMA to read that the *new*  
14 *development within an expanded area of the UGA* should retain all of the same  
15 characteristics, whether it is by density or architecture. In fact, to allow such a perpetuation  
16 of pre-GMA standards would essentially be removing key elements of the GMA – namely  
17 more compact urban growth and the reduction of low-density, sprawling development – from  
18 the City of Napavine's obligations under the GMA. Without some parameters for these  
19 goals and requirements, what type of GMA-planning is the City required to do?  
20

21  
22 For Lewis County and its cities to continue a historic, sprawling, low-density development  
23 pattern is simply unsustainable, financially and otherwise. It will exacerbate many of the  
24 problems this development pattern has already created throughout Washington State —  
25 diminishing natural areas and working farms, increasingly longer commutes and traffic  
26 congestion, and harmful environmental impacts such as air, water pollution and flooding, as  
27 well as spreading infrastructure over large and sprawling distances in an inefficient and  
28 expensive manner. The density levels adopted must reflect these principles.  
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<sup>106</sup> Index 118, at 4

<sup>107</sup> Napavine's Zoning Code at Chapter 17.16.

<sup>108</sup> RCW 36.70A.020(4); 36.70A.070(2).

1 As a former local elected official, I have great respect for the difficult responsibility local  
2 elected officials have in making tough land use decisions required by the GMA. I appreciate  
3 the GMA's direction on deference to local government decisions and the importance of local  
4 circumstances. Nevertheless, I do not believe the GMA's inclusion of the phrase "local  
5 circumstances" equates to each and every city or county developing a separate and unique  
6 system of planning or relying on past planning practices and development patterns. This  
7 counters the underlying coordination of planning at a state-wide level on which the GMA is  
8 based and creates inconsistencies when cities within a county are seeking to facilitate  
9 county-wide planning goals as well as working in concert with neighboring counties. For  
10 these reasons, I feel the issues raised by Petitioners needed to be addressed by the Board,  
11 and by the County and the City on remand.  
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15 \_\_\_\_\_  
16 Holly Gadbow, Board Member  
17

18 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

19 **Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the**  
20 **mailing of this Order to file a petition for reconsideration. Petitions for**  
21 **reconsideration shall follow the format set out in WAC 242-02-832. The original and**  
22 **three copies of the petition for reconsideration, together with any argument in**  
23 **support thereof, should be filed by mailing, faxing or delivering the document directly**  
24 **to the Board, with a copy to all other parties of record and their representatives.**  
25 **Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),**  
26 **WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for**  
27 **filing a petition for judicial review.**

28 **Judicial Review. Any party aggrieved by a final decision of the Board may appeal the**  
29 **decision to superior court as provided by RCW 36.70A.300(5). Proceedings for**  
30 **judicial review may be instituted by filing a petition in superior court according to the**  
31 **procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil**  
32 **Enforcement. The petition for judicial review of this Order shall be filed with the**  
**appropriate court and served on the Board, the Office of the Attorney General, and all**  
**parties within thirty days after service of the final order, as provided in RCW**  
**34.05.542. Service on the Board may be accomplished in person, by fax or by mail,**  
**but service on the Board means actual receipt of the document at the Board office**

1 within thirty days after service of the final order.

2 Service. This Order was served on you the day it was deposited in the United States  
3 mail. RCW 34.05.010(1).  
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